(Testimony of Charles Ranson.)

Q. Isn't that right? A. Yes, sir.

Q. Do you know what the letter "P" stands for?

A. Well, I don't, no sir.

Q. But notwithstanding you have seen thousands of cases with [1231] the letter "P", you remember distinctly on this shipment there was a letter "P" on some cases? A. Yes, sir.

Q. And there was not a letter "P" on other cases, am I correct in that? A. Yes, sir.

Q. Mr. Goddard, you say, participated in selecting the eggs that were going on that dock?

A. Mr. Goddard—either Mr. Goddard brought the eggs over to us to be loaded or else, if he was too busy, he would specify the eggs for us to take the dolly and go over and get them ourselves.

Q. Which did he do on this occasion?

A. He brought the eggs to me.

Q. How do you remember that?

A. Because I was working out in the back, and when I got out to the truck the eggs were standing there and he told me to start loading the eggs onto the truck.

Q. Isn't it a fact, Mr. Ranson, that the general mode of your loading the truck on the occasions that you were selected to make a delivery that Mr. Goddard or someone would say, "Take so many cases of those eggs and put them on that truck," and that you would then take the eggs and put them on the truck? Isn't that the general method that you followed in the delivery of eggs?

A. No, sir, not necessarily.

(Testimony of Charles Ranson.)

Q. Isn't that the method you followed nine times out of ten when you delivered eggs, that a stack of eggs would be pointed out to you by someone in the firm of Nye and Nissen and they [1232] would say, "Take 45, 25," or some number of cases and load them onto a truck?

A. I wouldn't say nine times out of ten, no, sir.

Q. What percentage would you say that that was the method which would be usually followed?

O. Well, the only time, the only occasion I ever had to have it done like that was when he was awfully busy.

Q. Yes?

A. How many times he would do it out of a delivery I wouldn't know because I was never hired as a driver in the first place.

Q. At all events, it happened frequently, did it not, where the quantity of eggs, quantity of cheese, quantity of butter was pointed out to you and you were told to put so many cases on a truck, isn't that right?

A. It happened once in a while, yes, sir.

Q. How many times when you made that request did you make a mistake and pick the wrong eggs, the wrong butter and the wrong cheese in the seven month period you were working for Nye and Nissen?

A. Well, I couldn't recall that. Usually if we did go over and pick out the eggs ourselves, after someone else told us to get them, they were always checked again before we put them on the truck.

(Testimony of Charles Ranson.)

Q. How many times, Mr. Ranson, while you were employed by Nye and Nissen were you requested to go and select merchandise, and you selected it, put it on the truck, delivered it, and [1233] then found that you had delivered the wrong merchandise? How many times did that happen in the seven or eight months period you were employed at Nye and Nissen?

A. None that I can recall, that I ever delivered.

Q. Pardon me?

A. None that I can recall that I ever delivered.

Q. What were the facts leading up—you were discharged by Nye and Nissen, were you not?

A. No, sir, I quit.

Q. You quit? Now, Mr. Ranson, wasn't the constant relationship between you and Nye and Nissen one whereby they were shorthanded and you came into that plant usually in an intoxicated condition day after day, week after week? A. I, what?

Q. Came into the plant intoxicated; isn't that the fact?

A. Day after day? Week after week?

Q. Yes, day after day. A. No, sir.

Q. Did you not have numerous conversations about your drinking with the employees of Nye and Nissen on the job? Numerous conversations?

A. I have had several occasions when the boss and I talked it over, yes, sir.

Q. Who did you talk it over with?

A. Well, Mr. Goddard and Mr. Moncharsh.

Q. And the subject matter of the conversations

(Testimony of Charles Ranson.)

was drinking, wasn't it? Isn't that the fact? I do not want to embarrass you.

A. Once in a while, but I never came on the job day in and day out, week in and week out, drunk, no, sir. [1234]

Q. Well, a third of the time?

A. I wouldn't say a third of the time, no, sir.

Q. How many times did you discuss with Mr. Moncharsh and Mr. Goddard the matter of your drinking in connection with performing your services? A. I wouldn't know that.

Q. How many times did you discuss with Mr. Goddard the matter of your drinking and making mistakes in deliveries? How many times?

A. I wouldn't know that. I don't recall any time that I ever made a delivery when I was drinking and made a mistake.

Q. What?

A. I never drove the truck when I was drinking.

Q. When you were what?

O. When I was drinking.

Q. In the loading of the truck, when you did not drive it at all, you helped load trucks too, didn't you? A. I helped load trucks, yes, sir.

Q. As a matter of fact, the first occasion that the gentlemen from the FBI called on you, right after this incident, you were in an intoxicated condition and could not see them, isn't that right?

A. What was the question?

Q. They left the car there for you to go down to 111 Sutter Street?

(Testimony of Charles Ranson.)

The Court: Read the question.

(Question read.)

A. Yes, sir.

Mr. Faulkner: That is all. [1235]

Redirect Examination

Mr. Houck: Q. You testified on cross-examination, Mr. Ranson, that you were interviewed by the agents of the Bureau on May 20, is that correct?

A. Yes, sir.

Q. Do you recall about how long before that it was that you made this delivery that you have testified about?

A. About a week or ten days.

Q. Where was Mr. Goddard when you were loading this truck?

A. Well, his office was right there by the truck. He was in the office and out of the office, and usually Mr. Goddard was running around so much, he was busy, and I don't recall that he was there all the time that I loaded the truck, or off and on.

Q. Was he there part of the time?

A. Part of the time, yes, sir.

Q. Had you been drinking prior to the occasion on which you loaded this truck on this day that you made this delivery?

O. No, sir, not that I recall.

Q. You testified that you saw numerous cases of eggs at the Nye and Nissen plant with the letter "P" on them. Had you ever been instructed to

(Testimony of Charles Ranson.)

mix those cases in on any other deliveries that you made besides this one?

A. No, sir. This was the only one.

Q. This was the only one, is that correct?

A. Yes, sir.

Q. Had you ever told Mr. Goddard that you did not want to take [1236] a load prior to the time that you made that comment on this load?

A. I had on several occasions, yes, sir.

Q. On those occasions did your objection have anything to do with the weight of the cases of eggs that you were taking? A. No, sir.

Q. When you took the load down to the dock you said that the checker checked the number of cases that you delivered, is that correct?

A. Yes.

Q. Did he weigh these cases of eggs?

A. If he did, he didn't weigh them in front of me, no, sir.

Q. You did not see him weigh the cases?

A. No, sir.

Q. Did he open any of them up?

A. Not that I recall, no, sir.

Q. You testified that you have spoken to us or Counsel or agents of the Government on three occasions prior to this case, is that correct?

A. Yes, sir.

Q. On any of those occasions or on any other occasion on which you talked to us, did we ever ask you to testify to something which you did not presently recollect? A. No, sir.

Mr. Houck: That is all.

(Testimony of Charles Ranson.)

Recross Examination

Mr. Faulkner: Q. Counsel asked you a question whether—"Did we ask you to testify to anything that you did not recollect?" Who are the agents of the FBI that you have talked to?

A. Well, I talked to this gentleman here, Mr. Pratt——

Q. Which gentleman do you mean?

A. I don't know his name. [1237] Both gentlemen there and Mr. Pratt.

Mr. Houck: I think for the record——

Mr. Faulkner: Just a moment. I will clear the record. Mr. Houck is a lawyer. He hasn't anything to do with the FBI.

The Witness: Oh.

Mr. Faulkner: Q. The man in back of him—is that a person you talked to? A. Yes, sir.

Q. Did you talk to any other agent of the FBI?

A. That gentleman sitting in the back there.

Q. Which one?

A. In the brown suit back there.

Q. One of these gentlemen is Mr. Magee and one is Mr. Johnson. I do not know which is which.

Q. You identify Mr. Johnson and Mr. Magee?

A. Yes, sir.

Q. Are those the men that talked to you in May, 1944?

A. Well, I know Mr. Johnson but I don't remember Mr. Magee. I don't recall Mr. Magee.

Q. How many times did you talk to Mr. Johnson? A. That was the only occasion.

(Testimony of Charles Ranson.)

Q. Did he ever indicate to you, Mr. Ranson, that you owed a patriotic duty to help the FBI?

A. That I what? I beg your pardon?

Q. That you owed a patriotic duty as a citizen to help the FBI? A. No.

Q. Did he ever mention that to you?

A. No, sir.

Q. He did not. That is all. [1238]

The Court: The jurors may take a recess now.

(Recess.) [1238-a]

The Court: Waive the roll call, stipulating and agreeing all the jurors are seated in the box?

Mr. Faulkner: Yes.

Mr. Pratt: If the Court please, at this time I want again to offer in evidence as Exhibit No. 1, which is the general agency contract between the United States and the American Export Lines, which was referred to in connection with the testimony relating to the steamship Cape Breton, and about which these officials of Matson Navigation Company testified; as heretofore explained, this is the contract between the United States War Shipping Administration and the American Export Lines, which contract provided for the management of certain boats assigned and defines the duties of the general agent. I think your Honor will recall that it appears now that Matson Navigation Company acted as a sub-agent under this contract, and my next witness I expect to use to show the sub-agency agreement between the American Export Lines and Matson. At the same time, I want

to offer in evidence Exhibit No. 13, which is a general agency contract between the United States and Matson. Matson Navigation Company, the evidence will show, operated, has already shown operated about a hundred boats for the War Shipping Administration, under a direct general agency contract. As to this Cape Breton, the general agent was, as I said, American Export Lines, that was a sub-agency to Matson, and I am offering those two contracts in evidence [1239] at this time. Part of this exhibit is the assignment to American Export Lines of the steamship Cape Breton.

Mr. Faulkner: We object to the introduction in evidence of that contract between the War Shipping Administration and American Export Lines, a company with which there is no showing in this record at this time that the firm of Nye & Nissen had any business dealings of any kind, character or description. We object to it on the ground no foundation is laid that Nye & Nissen Company ever submitted to the American Export Lines any claims, had any business with them, had any contact with them in any shape, manner or form, and that the contract between the War Shipping Administration and this company is hearsay as to the defendants, not binding upon them. It is offered as to count 1?

Mr. Pratt: It is offered as to count 1.

The Court: It will be admitted and marked.

Mr. Faulkner: Exception.

The Court: It will speak for itself, whatever it may be.

(U. S. Exhibit 1 for identification was received in evidence.)

Mr. Faulkner: The next one.

Mr. Pratt: I now offer Exhibit No. 13, which is the general agency contract between War Shipping Administration and the Matson Navigation Company, also with the allocation letters, which are also part of the certification, assigning the steamship Phillipa, and also the proof will be shown as to the assignment [1240] of the Hawaiian Shipper, although the assignment of the Hawaiian Shipper does not appear in this certified copy, it will be shown by other evidence.

The Court: Do you expect to call a witness for that?

Mr. Pratt: Yes.

Mr. Faulkner: May I get this clearly identified for the record? Exhibit 13 purports to be an allocation to Matson?

Mr. Pratt: Copy of letters of allocation to Matson and service agreement with Matson, and part 2, same contract. This is a form of contract that is standard, and a book containing a copy of this contract was tendered to counsel for the defendants.

Mr. Faulkner: Yes, that's right. In other words, I think there were two forms of contract.

Mr. Pratt: There were two forms of contract, one related——

Mr. Faulkner: One would be one type, and the Exhibit 13 was the other.

Mr. Pratt: One is for the operation of tankers. I think none of them are in this case.

Mr. Faulkner: We object to the introduction of Exhibit 13 on all the grounds urged with respect to Exhibit 1, and upon the additional ground as to this exhibit that the Matson Navigation Company does not become by virtue of a contract which provides that it shall as an agent—I will get the right place—do certain things and be paid certain moneys [1241] and perform certain business operations which are common to shipping business, that they do not thereby become an agency of the United States within the meaning of the statute.

The Court: I am not familiar with the language in the contract between the parties. If there is any question about it, counsel, you might point it out.

Mr. Faulkner: The first article of this particular document provides that the United States appoints the general agent, that is, the Matson Navigation Company, as its agent, and not as an independent contractor, and Matson to manage and conduct the business of vessels assigned to it by the United States from time to time. The general agent accepts the appointment and undertakes an assignment to manage and conduct the business for the United States——

The Court: For the United States?

Mr. Faulkner: For the United States, conduct the business for the United States under the agency contract, in accordance with directions, orders or regulations as the latter has prescribed or from time to time may prescribe, and upon the terms and

conditions herein provided of such vessels as have been or may be by the United States assigned to it, and accepted by the general agent for that purpose.

Article 3(a):

"To the best of its ability, the general agent shall for the account of the United States: [1242]

(a) maintain the vessels in such trade or service as the United States may direct, subject to its orders as to voyages, cargoes, priorities of cargoes, charters, rates of freight, and charges, and as to all matters connected with the use of the vessel; or in the absence of such orders, the general agent shall follow reasonable commercial practices;

(b) collect all moneys due the United States under this Agreement and deposit, remit, or disburse the same in accordance with such regulations as the United States may prescribe from time to time, and account to the United States for all moneys collected or disbursed by it or its agents;"

Then there is another provision that the general agent is to equip, victual, supply and maintain the vessels, subject to such directions, orders, regulations and methods of supervision, and inspection as the United States may from time to time prescribe.

Then there is another provision that the agent shall exercise due diligence; their acts shall be subject to approval; the United States shall reimburse the general agent at stated intervals.

I think there is a provision in here for compensation of the general agent. Well, there is a method of fixing compensation. [1243]

Mr. Pratt: Now, then, Article 7.

Mr. Faulkner: "Article 7. The United States shall reimburse the general agent at stated intervals determined by the United States for all expenditures of every kind made by it in performing, procuring or supplying the services, facilities, storage supplies or equipment as required," and so forth, "and any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder."

The Court: If you have a sufficient record, the court is prepared to rule.

Mr. Faulkner: In other words, your Honor, the point of the objection—We have argued it out before, so I won't argue it again—the point of our objection is that the general agent, where Matson is a general agent, they are agents—they do not become an agency of the United States. The War Shipping Administration, the RFC, all of those are agencies of the Government, but where the Government enters into a contract to appoint a general agent to run a ship, that company does not become an agency of the United States. In the ruling in the Lowe case, that precise point was decided in favor of the appellant——

The Court: I am not familiar with that case.

Mr. Faulkner: The Lowe case is the case, your Honor, [1244] where a shipbuilding company was building ships for the Maritime Commission, as I recall it, and the payroll papers in that case were submitted to the company and later the company was reimbursed for the payment of those payrolls

in the course of its business, and the claim was made that the activities of the defendants there constituted the presentation of a false claim against the agency of the United States, and the Circuit Court held that that company building ships where the moneys were supplied by an agency of the United States Government, the Maritime Commission, did not make the shipbuilding company an agency, and reversed that case.

Now, I might say, your Honor, we had the same question in the Jones case, and that Lowe decision had come after your Honor had decided a demurrer. Then when the Jones case was retried, I might tell your Honor that when Judge Fee tried it and the Lowe case was directed to his attention, he indicated that he had very serious doubts whether the transactions in the Jones case came within the meaning of section 80, but in deference to your Honor's prior ruling he denied our motion in that case, but the result was all right, so it has never gone up to the appellate court. In my judgment, the Circuit Court's decision indicates that Matson is not an agency of the United States, it is merely a general agent to do a particular job under a written contract.

Mr. Pratt: We don't claim that the Matson Company was an [1245] agency of the United States. We are claiming that the War Shipping Administration was an agency of the United States, and that Matson was acting for the War Shipping Administration under the provisions of this contract. There is not the slightest claim that any of

these shipping companies were agencies of the United States.

Mr. Faulkner: If that is so, I will submit the objection.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

The Court: Let it be admitted and marked.

(U. S. Exhibit 13 For Identification was thereupon admitted in evidence.)

Mr. Faulkner: That is received on the first count?

Mr. Pratt: Yes, this is offered on the first count only.

HUGH GALLAGHER,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Hugh Gallagher.

Direct Examination

Mr. Pratt: Q. Your name is Hugh Gallagher?

A. Yes.

Q. Mr. Gallagher, your home is in San Francisco, is it not?

A. It is.

Q. You are one of the officials of Matson Navigation Company?

A. I am a vice-president of Matson Navigation Company.

Q. Have you been connected with that company for a great many [1246] years?

(Testimony of Hugh Gallagher.)

A. About twenty years now, sir.

Q. How long have you been vice-president?

A. I believe about five years, sir.

Q. Are you familiar with the functions of Matson Navigation Company in connection with general agencies and sub-agency contracts with the War Shipping Administration in the management of vessels from this port?

A. Yes, I am familiar, and, as a matter of fact, that comes under my supervision.

Q. As vice-president of Matson Navigation Company, it is among your duties to handle the relations with the War Shipping Administration, is it not? A. Yes.

Q. Are you familiar with a corporation known as American Export Lines? A. Yes, sir.

Q. Are you familiar with the fact that there is a contract between the War Shipping Administration and the American Export Lines, a general agency contract for the handling of such vessels as may be assigned to that company?

A. I have knowledge that there is such a contract.

Q. I will ask you whether you have with American Export Lines any sub-agency contract whereby your company manages certain boats assigned to American Export Lines?

A. We do not have a written contract with them. Our arrangement, in the beginning, was a verbal one.

(Testimony of Hugh Gallagher.)

Q. Under such an arrangement, whatever arrangement there was, has your company in fact had the direction and management of [1247] the steamship Cape Breton?

Mr. Faulkner: We object.

The Witness: We have.

Mr. Faulkner: Just a minute, Mr. Gallagher. We object to that as incompetent, irrelevant, and immaterial, and hearsay. The Matson Navigation Company cannot establish itself as an agency of the United States Government by an oral contract with the American Export Lines. The relationship, whatever it is, of necessity must flow from whatever contract was actually in existence. It could not be created in parol.

Mr. Pratt: In answer to that, I direct the court's attention to the provisions of the contract.

The Court: Are you familiar with these contracts here?

The Witness: Yes.

The Court: Why not hand him the contract and develop the fact, whatever it may be? [1248]

Q. I direct your attention to Exhibit No. 1 in evidence, which is a certified copy of a contract between the War Shipping Administration and the American Export Lines, and I particularly direct your attention to the provision in article 7. These contracts are all uniform, are they not?

A. They are, yes. It is a standard form of contract.

(Testimony of Hugh Gallagher.)

Q. In that section is there authority for the appointment of several agents by the general agent?

Mr. Faulkner: We submit respectfully, your Honor, that the paragraph speaks for itself.

The Court: He is directing his attention to it.

Mr. Faulkner: No, he asked if it gives authority to do something.

The Court: If he knows, he may answer.

Mr. Faulkner: That would be the legal opinion of the witness concerning a written document.

The Court: You may cross-examine him on what he bases his opinion. The factual situation he is testifying to.

The Witness: I can't put my finger on the particular line, but there is authority in this contract for the general agent to appoint sub-agents, and there is nothing that I can recall that requires a written agreement between a sub-agent and an agent. As a matter of fact, we have a number of agency contracts with agents that are not in written form.

The Court: Let one of your able assistants there see if he can find that clause he has reference to.

Mr. Pratt: Q. As a matter of fact, what have been the activities of Matson Navigation Company in connection with the management of the steamship Cape Breton?

Mr. Faulkner: Just a moment. Will you read the first part of that question?

(Testimony of Hugh Gallagher.)

(Question read.)

Mr. Faulkner: We object to that as hearsay as to the defendants.

The Court: If he knows he may answer.

The Witness: I do know.

Mr. Faulkner: If your Honor please, I think maybe the Cape Breton has had 27 voyages. Unless it relates to the time in which Nye & Nissen had some connection with the vessel, it would be hearsay and not within the issues of the case.

The Court: The court is going to allow the question. You may develop the fact, whatever it may be, in time.

Mr. Faulkner: Exception. That has not been developed.

(Question read.)

Mr. Faulkner: We object to that as too general, and not binding on the defendants.

The Court: Fix the time.

Mr. Pratt: Q. State the period of time that your company has had its activities in connection with the management of that boat.

A. I think the Cape Breton first turned up on the coast, here, in the first part of 1944, and we, as agents for the American Export Line, handled the vessel during its [1250] entire time when it was in a Pacific port. We took on all of the functions of the general agent. We provided the crew. We purchased the supplies. We obtained the fuel. We did all of the duties that the general agent would

(Testimony of Hugh Gallagher.)

have done had he been here. We substituted for his presence on the coast.

Q. In what manner were these services paid for by your company?

A. We charged an agency fee for the services.

Q. That is, you paid the bills, yourselves, initially?

A. We paid the bills and collected from the American Export Lines and were compensated by a fee.

Q. Do you know the source of funds with which you were paid by the American Export Lines in being reimbursed?

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness.

The Witness: If he knows he may answer.

A. Well, I know that all of the companies were supplied with Government funds from which to disburse the moneys that were expended on behalf of the ships, and I can say that the American Export Lines followed that same practice, to the best of my knowledge.

Q. In connection with the general agency contract which you had with the Government, are you able to state approximately how many vessels were assigned to Matson for management under that general agency contract?

A. We had about 90 vessels, besides the Matson.

Q. And those have been managed by your company under that contract?

A. Under that contract, yes.

(Testimony of Hugh Gallagher.)

Q. Have you a record with you of the assignment of the steamship Hawaiian Shipper to you under your general agency contract?

A. I have.

Q. Will you produce it, please?

A. This is a telegram to the Matson from the War Shipping office assigning the Hawaiian Shipper, and the receipts signed when we took the vessel over.

Mr. Pratt: May these papers be marked for identification?

(The documents were marked U. S. Exhibit 91 For Identification.)

Mr. Pratt: Q. The papers you have produced have now been marked Exhibit 91 For Identification. This telegram, I observe, is from Washington, dated June 12th. It looks to me as if it was June 12, 19——

The Court: I suggest you hand it to the witness and ask him what it is.

The Witness: June 12th—there is a 1943 date over here.

Mr. Pratt: Yes, 1943.

A. It looks like an "8" but I think it must be 1943.

Q. What is this paper?

A. It is a Postal Telegram from Washington, D. C., addressed to Matson Navigation Company, 215, signed by Mr. J. F. Devin, W. P. B.

The Court: What does W. P. B. stand for, if you know?

(Testimony of Hugh Gallagher.)

A. I wouldn't know that. It might be the initial of the man [1152] who sent the telegram for Mr. Devin.

Q. Who is Mr. Devin?

A. He was one of the officials of the War Shipping Administration in Washington at that time.

Mr. Pratt: Q. Do you know him personally?

A. No, I do not. I just know him by dealings.

Q. Acting under this telegram did you then take charge of the operations of the Hawaiian Shipper?

A. Yes, we took over the vessel and signed for her on June 13, 1942.

Q. And then the telegram——

A. The telegram is—the date here——

Q. It must be June, 1942, is it not?

A. It is a little confusing.

Q. It looks like 1948, doesn't it?

A. June 12 and 13. It must have been 1942, because this was signed 1942.

Q. You signed a receipt for the boat, then, did you?

A. Yes, we signed—Well, the ship was signed for on our behalf by the agents, our own agents in New York.

Q. And these papers which you have produced, are these part of the regular records of Matson Navigation Company kept in the ordinary and regular course of business? A. They are, yes.

Mr. Pratt: I offer it in evidence.

Mr. Faulkner: I object to it as incompetent,

(Testimony of Hugh Gallagher.)

irrelevant, and immaterial, hearsay as to the defendants, not binding upon them.

The Court: The objection will be overruled. Let it be admitted and marked. [1253]

Mr. Faulkner: Exception.

(U. S. Exhibit 91 For Identification was received in evidence.)

Mr. Pratt: This telegram is as follows:

"Matson Navigation Company,
215 Market Street, San Francisco, California.

"Steamer Hawaiian Shipper scheduled delivery your company Baltimore, Maryland, on June 13th, effective immediately. You authorize the point and dispatch master, chief engineer, chief second, third mate, first, second and third assistant engineers, radio operator, chief steward, wages, working conditions in accordance agreements now in effect between your company and maritime labor organizations. Submit detail service records of officers and department heads this office immediately after departure steamship Hawaiian Shipper. Please submit crew list this office. Arrange Coast Guard assignment, deck engineer cadets. Please follow generally instructions previously issued re Liberty steamers Stephen A. Douglas and others.

J. A. DEVIN,

W. P. B."

(Testimony of Hugh Gallagher.)

And the other paper attached to it, part of the same exhibit:

"United States Maritime Commission,
War Shipping Administration, June 13, 1942.

"This is to certify that the steamship Hawaiian Shipper, ex Empire——"

The Witness: "Builder," ex Empire Builder.

Mr. Pratt: "Fulmar" it looks like. "Fulmar, owned by the United States Maritime Commission, was on the 13th day of June, 1942, at 12 o'clock noon eastern war time, delivered at the port of Baltimore, Maryland, by War Shipping Administration to Matson Navigation Company under the terms and conditions of service agreement Form GAA to be executed having on board fuel, water, stores and equipment as per inventories taken on the date of delivery. The United States Maritime Commission, War Shipping Administration, by J.——"

Do you know what that name is?

A. Banstod.

Mr. Pratt: And then below that, "Matson Navigation Company, Isthmian Steamship Company, as agents, by F. X. Sharp, approved J. W. Banstod.

Mr. Pratt: And then below that, "Matson Navigation Company, Isthmian Steamship Company, as agents, by F. X. Sharp, approved J. W. Banstod, District Manager, Port of Baltimore."

Mr. Faulkner: Is that all, Mr. Pratt?

Mr. Pratt: Yes.

(Testimony of Hugh Gallagher.)

Mr. Faulkner: I will finish with this witness, your Honor, in just a few questions. He has been waiting a long time.

Cross-Examination

Mr. Faulkner: Q. Mr. Gallagher, this telegram from Washington relates to your getting a crew when the ship got here, is that it?

A. No—it does relate to that, but the [1255] last part of the telegram instructs us to follow the procedure outlined in assignment of earlier vessels rather than going to lengthy telegrams giving us full detailed instructions. They shortcut it by referring to earlier assignments as a war hurry-up.

Q. What I want to get clear is, Is this one of the vessels that the Matson Navigation Company handled directly with the War Shipping Administration, or is this one that the American Export Lines had managed?

A. This is a Matson Navigation Company vessel, Matson assignment.

Q. After you took the delivery of the vessel, you ran the vessel, did you not, in the same manner you would run one of your own vessels?

A. Yes.

Q. And you would order for it in the same manner, goods, merchandise, you would outfit the crew, outfit the ship, am I correct in that?

A. That was the duty of the general agent, yes.

Q. In other words, the matter of general agency

(Testimony of Hugh Gallagher.)

in the shipping business exists not only in relation to the United States Government, but there are general agents of a lot of shipping companies, isn't that correct?

A. Well, it followed very closely the agency pattern that is usually followed between an agent and an owner, yes.

Q. In other words, between an owner and an agent? A. Yes.

Q. A great quantity of the shipping in the United States is handled in the United States by general agents?

A. Substantially [1256] all of it.

Q. Substantially all of it? A. Yes.

Q. And the Government was following that same pattern? A. Yes.

Q. They designated, for instance, the Matson Navigation Company to act as a general agent?

A. Yes.

Q. And then you performed duties as a general agent with respect to that ship? A. Yes.

Q. You ordered the merchandise; you satisfied yourself with relation to it; and you paid for it, is that correct? A. Yes.

Q. And then later, under some accounting method, you received reimbursement from someone?

A. That is right. We acted always as agent for the United States Government under this agency agreement.

Q. That is right, under the agency agreement,

(Testimony of Hugh Gallagher.)

but I mean that later you would get reimbursement from somebody? A. Oh, yes.

Q. With respect to the transactions in which the American Export Lines were involved, certain vessels, that was a different situation. You were, either orally or by some confidence that was reposed by the American Export Lines in Matson, they requested you to act for them; is that right?

A. That is right.

Q. You do not think that there was any writing that evidenced your relationship?

A. Well, there was subsequent writing that would establish the fact that we were agents, if that is what you mean, but there was no agency contract.

Q. No actual formal contract, is that it?

A. No. [1257]

Q. In performing work under that oral delegation of authority, you went ahead and you victualed the ships, provided crews, and you ran them as general agents, am I correct in that?

A. No, we ran them as a sub-agent of the general agent.

Q. But they did not participate. I mean you ran them the same as though you were the general agent, am I correct?

A. You do and you do not. You do not substitute for the general agent. You perform the duties of an agent, of a general agent. There are certain limitations there.

(Testimony of Hugh Gallagher.)

Q. You would perform for the American Export Lines, except you used your own money?

A. We used our own money but we collected from them.

Q. At a later time? A. At a later date.

Q. When it was all over, or from time to time you received money from the American Export Lines in payment of the compensation of the Matson Line? A. An agency fee, yes.

Q. Was that agency fee paid by the American Export Lines?

A. It was paid by the American Export Lines, yes.

Q. In other words, although you testified that the American Export Lines received money from the Government, as a matter of fact you do not know that, of your own knowledge, do you?

A. Well, I have never seen the Government pay them the money, but I have had intimate——

Q. You assume——

The Court: Just a moment. [1258]

Mr. Pratt: I would like to have him finish the answer.

The Witness: I have never seen them pay the money, but I have been in such close association with the men I have dealt with there that we have discussed the methods by which the Government turned money over to them and to us, and compared information with respect to general agency accounts, and so on, and I feel almost as sure as I am sitting here that they had the same kind of

(Testimony of Hugh Gallagher.)

treatment from the Government as to financing as the Matson Company did.

Mr. Faulkner: Q. In other words, Mr. Gallagher, to get the picture clear, you had a relationship where you were a delegated sub-agent orally, and at the same time you were a general agent under a written contract; am I correct in that?

A. That is right, yes.

Q. And you assumed the method in which the American Export Company was treated was the same as the manner in which you were treated under your own contract; am I correct in that?

A. Yes.

Q. I mean the moneys that you actually received on any vessel that you handled under an oral subagency agreement, the moneys the Matson Company received, were part of the fees received by the American Export Company, were they not?

A. I don't know about the fees. The American Export Lines had its funds from which to disburse its ships' accounts and agency fees.

Q. And the agency fees went to the American Export Lines?

A. No, the agency fees from the Government for the over-all agency [1259] account went to the American Export Lines and they paid us.

Q. Under an arrangement you had?

A. Under an arrangement they paid us from their earnings. They paid us a fee for doing the work for them out here.

(Testimony of Hugh Gallagher.)

Q. From the fees that they had received generally? A. Yes.

Mr. Faulkner: That is all.

Mr. Pratt: Just one question.

Redirect Examination

Mr. Pratt: Q. Mr. Gallagher, on cross-examination you said that you were reimbursed by the Government for your expenditures in the operation of these ships. I am asking whether a fund was provided in advance out of which you made disbursements.

A. Yes. Originally I don't think so, until the thing got moving. We used a substantial part of our own money, and then that was gradually replaced when the system was built up by the War Shipping Administration.

Q. And then a system was built up whereby you were supplied with funds in advance of expenditures? A. Yes.

Q. Initially, how much of a fund was so provided?

A. It ran into several millions. I don't know how much exactly.

Mr. Pratt: That is all.

Mr. Faulkner: That is all.

The Court: Keep in mind the admonition of the court. The jurors will return tomorrow at ten o'clock, in the morning.

(An adjournment was taken until tomorrow, Thursday, February 7, 1946, at 10:00 o'clock a.m.) [1260]

Thursday, February 7, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

The Court: Waive the roll call, stipulating and agreeing all the jurors are present and seated in the box. Proceed.

Mr. Pratt: If the Court please, at this time the Government offers in evidence Exhibit 3 for Identification, which is a certified copy of a general agency contract between the United States and Agwilines, Inc., and that also included in this certification is the allocation to Agwilines, Inc., of the Steamship Cape Charles. This relates to the second count of the indictment, wherein it is specifically alleged that in connection with the supplying of food products to the steamship St. Charles a false claim was made upon the Government. The Government now offers in evidence its contract with the accompanying documents that relate to the allocation of the Cape Charles.

Mr. Faulkner: We make the same objection, your Honor, that we made to the introduction of Exhibit No. 1, that it is incompetent, irrelevant, and immaterial, and hearsay as to the defendants, and that the contract, upon its face, discloses that it does not constitute Agwilines an agency of the United States within the meaning of the law.

The Court: So the record is clear, you may indicate the purpose of this offer. [1261]

Mr. Pratt: In the first place, the Government does not claim that Agwilines, Inc., is an agency

of the United States, but that this corporation, in fact, had a contract with the War Shipping Administration, which is an agency of the United States, for the management and victualing of this steamship Cape Charles. The allegations of the indictment in the third paragraph recite that on the 8th day of March, 1942, the United States, acting for and through the War Shipping Administration and Agwilines, Inc., entered into that contract designated Contract WSA 186, which provided as recited in the indictment. This is a bit of evidence which relates definitely to the allegations of the indictment, and shows the connection of the United States, the interest of the United States, and that, in fact, the whole matter is one within the jurisdiction of an agency of the United States, to wit, the War Shipping Administration.

Mr. Faulkner: Your Honor already has a pattern of what happened under these contracts. In other words, the other contract was received by your Honor in the testimony of Mr. Gallagher and the other persons, Mr. Lee and Mr. Kirschbaum. It would appear that a contract existed between a particular agency of the United States, namely the War Shipping Administration, in which in writing it was provided that the Matson Navigation Company, and in this instance, the Agwilines, became a general agent for the purpose of performing certain [1262] services. Mr. Pratt has stated on two occasions that neither Agwilines nor Matson were agencies of the United States. Now, a bill is presented by Nye & Nissen to Matson Navigation Com-

pany, is paid by the Matson Navigation Company, and they assume that that pattern will follow these. Then, in turn, the Matson Navigation Company presents a claim to the War Shipping Administration. The claim of the Matson Navigation Company to the War Shipping Administration is a claim against an agency of the United States, and if they present a false claim they come within the meaning of the statute, but the claim of a purveyor of merchandise to the agent in the light of the proposed offer to the agency is not an agency of the United States, but a general agent under a contract, and doesn't come within section 80, Title 18, U. S. Code Annotated.

Mr. Pratt: If the Court please, counsel is mistaken in saying that the invoice was submitted to the general agents. The invoice is submitted to the United States of America, War Shipping Administration, Agwilines, and Inter-Ocean Steamship Company as general agents. The invoice is submitted to the United States, and the evidence will show that the claim was a false claim, the claim represented by this invoice addressed to War Shipping Administration. The Agwilines, this shipping company which acted for the United States, had the authority to select a sub-agent, and Inter-Ocean Steamship Company was selected in this instance. The next witness in this case will be an officer of Inter-Ocean. This is a part of the jurisdictional [1263] proof which is required by the Government to establish the fact that this is a matter within the jurisdiction of an agency of the United States, namely, War Shipping Administration.

The Court: The court is prepared to rule. Objection overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit 3 For Identification was thereupon admitted in evidence.)

Mr. Faulkner: You Honor, the statement by Mr. Pratt that it must be a matter within the jurisdiction of the United States is not the test of the statute. The statute is in two parts. When you present a false claim the claim must be a false claim presented to an agency of the United States. Mr. Pratt says the Agwilines is not an agency of the United States.

The Court: Well, he is going to call a witness who is an officer, we will find out what it is.

Mr. Pratt: If the Court please, the exhibit which is now in evidence is offered as to the second count of the indictment.

The Court: The second count.

Mr. Pratt: And also as to the first count of the indictment, on the theory of the Government that it it becomes and is an overt act in furtherance of the conspiracy described in the first count.

Mr. Faulkner: On the general offer, your Honor, we [1264] supplement our objection that no foundation has been laid for the introduction of that contract as to any individual defendant.

The Court: Objection overruled. Proceed.

Mr. Faulkner: Exception.

R. G. THOMAS,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. R. G. Thomas.

Direct Examination

Mr. Pratt: Q. Your name is R. G. Thomas?

A. Yes.

Q. Your home is here in San Francisco; is it not?

A. I live across the bay in Piedmont.

Q. In Piedmont. What is your business?

A. I am treasurer of the Inter-Ocean Steamship Corporation.

Q. Your headquarters as treasurer of Inter-Ocean Steamship Company are in San Francisco, are they not? A. Yes.

Q. In connection with your position as treasurer of Inter-Ocean Steamship Company, are you familiar with a certain contract of general agency between the United States and Agwilines, Inc., for the management of certain vessels for the Government?

A. Well, I know that they do have a general agency contract. I am not familiar with their general agency contract. We have one, ourselves.

Q. You also have a general agency contract with the Government, [1265] have you?

A. That's right.

Q. In connection with Agwilines, Inc., I will

(Testimony of R. G. Thomas.)

ask you whether you have had the management of any vessels as a sub-agent of Agwilines, in representing the War Shipping Administration?

Mr. Faulkner: I object to that as incompetent, irrelevant, and immaterial, and that a sub-agency agreement resting in either parole or in writing does not constitute the Interocean Steamship Company an agency of the United States within the meaning of law.

The Court: Overruled.

Mr. Faulkner: Exception.

The Court: Read the question.

(Record read.)

The Witness: A. We have.

Mr. Pratt: Q. Under what character of arrangement with Agwilines have you represented that company in the management of vessels for the War Shipping Administration?

A. Well——

Mr. Faulkner: May my objection go to all the testimony relating to the substance of any oral contract, your Honor?

The Court: Very well; the record will so show.

Mr. Faulkner: Exception.

The Witness: We have no written sub-agency contract with Agwilines. The agency will have to be proven by our actions, because we do represent them, and spend their money, and we do it for a fee. [1266]

(Testimony of R. G. Thomas.)

Mr. Pratt: Q. Have you had the management for the War Shipping Administration of the steamship Cape Charles? A. We have.

Q. During what period?

A. Well, every time the vessel comes into a Pacific Coast base we act in the capacity of a subagent.

Q. In that connection what do you do?

A. Well, we will enter the vessel where it comes in, we will pay off the crew, we will provision the ship, we will repair it, and clear her for whatever port she is going to.

Q. That is all under the direction of the War Shipping Administration? A. That's right.

Q. I direct your attention to a document—may I interrupt, if the Court please, and ask this be marked for identification? It is a document, a purchase order entitled "United States of America War Shipping Administration, Agwilines, Inc., Agent, Port of San Francisco," dated April 28, 1944, to Nye & Nissen, Inc. It is for certain food products and with the signature "Interocean Steamship Company, Agent."

The Court: It may be admitted and marked for the purpose of identification.

(The document was marked U. S. Exhibit 92 for identification.)

Mr. Pratt: Q. Does this document come from the regular records of Interocean Steamship Corporation? A. It does.

(Testimony of R. G. Thomas.)

Q. Kept and preserved by that corporation in the regular course [1267] of business?

A. That is true.

Q. In connection with the handling or management of this steamship Cape Charles?

A. True.

The Court: Are you familiar with this document?

A. I am familiar with it, yes.

The Court: What is it?

A. It is a purchase order, it is a copy. It is one copy of a purchase order.

The Court: Tell the jury what it is.

A. It is a purchase order that is printed by the Agwilines, Inc., giving instructions on the back of it as to its use, and we issue that and the number of copies. It covers the order of our purchasing department to Nye & Nissen to deliver to the steward's department of the Cape Charles for voyage No. 4 a quantity of provisions, 600 pounds of butter, 200 pounds of cheese, 30 cases of eggs.

Mr. Pratt: Q. The original of this purchase order went to Nye & Nissen, did it?

A. That's right.

Q. And when the original went there was a signature at the bottom?

A. There would be a signature of our purchasing agent, yes.

Q. That would be over the typed words "Inter-

(Testimony of R. G. Thomas.)

ocean Steamship Corporation, Agent," would it?

A. Yes.

Q. Did it? A. That's true.

Mr. Pratt: The Government offers in evidence this document, 92 for Identification. [1268]

Mr. Faulkner: May I ask Mr. Thomas a question?

The Court: Yes.

Mr. Faulkner: Q. Mr. Thomas, this is not a record kept in your department, is it?

A. Well, it is kept under my direction, yes.

Q. It is kept by your company, but it is kept by your purchasing agent? A. That's right.

Q. It is a record kept by the purchasing agent?

A. By one of our employees.

Q. It is not kept under your direction?

A. It is issued under my direction, yes.

Q. Do you know anything at all about it, about the facts of ordering the merchandise from Nye & Nissen, personally?

A. Only in a general sense, the routine of what we would do.

Q. But this particular purchase order is a record by Mr. Wentworth, is it not?

A. Waterworth.

Q. Waterworth. It is a record of his department, is it not? A. That's right.

Q. The typing is—you did not dictate the order?

A. No.

Q. You did not type the order? A. No.

Q. You did not place the order? A. No.

(Testimony of R. G. Thomas.)

Q. You know nothing about the order?

A. I paid the bill.

Mr. Faulkner: Your Honor, I object——

The Court: The testimony discloses that that is in his files. Is that right? [1269]

The Witness: There is a copy of it that came to my desk. That particular copy is kept in the purchasing department file.

Mr. Faulkner: Q. This is merely a copy of a document that at sometime reached you as the treasurer of the company?

A. At the same time that is issued and that copy is put in the purchasing department's files, a copy comes to my files, and I use it in connection with the approving of the invoice.

Q. This is not the first permanent record of the transaction, this is a copy that reached you later, is that correct?

A. I get a copy of that at the same time it is issued.

Mr. Faulkner: We submit the man who made the first permanent record of the transaction is the best evidence of the transaction, and we desire to cross-examine the purchasing agent in respect to these purchase orders, because they were issued by the purchasing department, the circumstances surrounding it.

The Court: Will he be available?

Mr. Pratt: The purchasing agent?

The Court: Yes.

Mr. Pratt: I don't know.

(Testimony of R. G. Thomas.)

The Court: Do you know whether or not he is?

The Witness: He is in the city but he is not connected with us any more.

The Court: Proceed.

Mr. Pratt: If the Court please, a subpena was issued for this corporation to produce the original of this document, [1270] and they reported that their copy, the original copy of this purchase order, was not available, that it had been destroyed or lost or something.

Mr. Faulkner: We have a copy that they furnished us later, I told you.

Mr. Pratt: The evidence is this comes from the regular records of this company. I submit it is admissible.

The Court: Let it be admitted and marked. Objection overruled.

Mr. Faulkner: Exception.

(The document was admitted in evidence and marked U. S. Exhibit 92.)

Mr. Faulkner: No foundation laid for the admissibility of that document in evidence from the testimony of Mr. Thomas. May I point out to your Honor that a record, to be admissible, must be a record kept by the person. The purchasing agent kept those records.

The Court: It was under the supervision of the witness on the stand.

Mr. Faulkner: That is merely a copy, that is not the first document.

(Testimony of R. G. Thomas.)

The Court: The court has ruled.

Mr. Faulkner: Exception.

The Court: Let the record stand.

Mr. Pratt: Q. This document which you have identified, [1271] which is now Exhibit 92 in evidence, is that document a part of the regular records of your company at the present time?

A. That's right.

The Court: Speak up so the jurors can hear you.

The Witness: That's right.

Mr. Pratt: Q. Mr. Thomas, upon the delivery of the products which are described in this purchase order, did you receive an invoice, did your office receive an invoice from Nye & Nissen?

A. Yes.

Q. I direct your attention to two documents—may we have these marked for identification U. S. Exhibits 93 and 94?

The Court: They may be admitted and marked for identification.

(The documents were marked U. S. Exhibits 93 and 94 for Identification.)

Mr. Pratt: Q. I direct your attention, first, to Exhibit 93 for identification, and I will ask you if that paper passed through the accounting department of your company, of which you have charge?

A. It did.

Q. I now direct your attention to Exhibit 94 for Identification, which appears to be a duplicate or carbon copy of the other. Did that also come into your possession? A. Yes.

(Testimony of R. G. Thomas.)

Q. Does this Exhibit No. 94 for Identification come from the files of your company, was it kept in the ordinary, regular course of the business of your company? A. That's right. [1272]

Mr. Pratt: Under the arrangement had with Mr. Faulkner yesterday we offer in evidence Exhibit 94 for Identification, with the stipulation that the rubber stamp certificate on the right-hand lower part of the paper bore the signature, "Nye & Nissen, T Robles"——

Mr. Faulkner: "T. R-o-b-l-e-s," it is this time, your Honor.

Mr. Pratt: "T. Robles, Bookkeeper."

Mr. Faulkner: That's right, your Honor.

Mr. Pratt: We offer in evidence Exhibit 94 for Identification.

The Court: Admitted and marked.

Mr. Faulkner: Mr. Pratt, it is agreed that there are two green stamps on these that wouldn't be part of the paper when it came to the Agwilines?

Mr. Pratt: Yes. Upon this paper when it went to the witness originally and to his company, Interocean, it did not contain the green rubber stamp in the middle of the upper part of the paper. I withdraw the offer for the moment to ask Mr. Thomas to look at the rubber stamp at the lower left-hand corner of this paper and ask whether that stamp was on the paper when it came to his office.

A. It would have to be, because that is one of

(Testimony of R. G. Thomas.)

the requirements of the War Shipping Administration.

Mr. Faulkner: Your Honor, we object to that as calling [1273] for an opinion and conclusion of the witness. We had a series of the same papers and none of them had these stamps. They are all the same. The witness says there was a requirement for that stamp. There is no evidence of that in this record.

The Court: How do you know it was a requirement?

A. The War Shipping Administration required that there be two certificates placed on every invoice, one must be signed by the vendor and one of them must be signed by the master or chief engineer or the steward's department, or the department of the vessel which it goes to. That stamp, the green stamp mentioned here, is one in which the responsible officer on the ship acknowledged the receipt of the goods.

Mr. Faulkner: If that is correct, your Honor, and it is accepted on that basis then the Government should have produced a counterpart of the other invoices. The other invoices haven't any such stamp.

Mr. Pratt: I am referring to this particular exhibit.

Mr. Faulkner: You are offering this as though it were binding on Nye & Nissen, because the witness has said the War Shipping Administration rules require that the vendee shall sign the invoice

(Testimony of R. G. Thomas.)

with that certificate. You have four or five, and you have not offered any that comply with that rule, except this one.

Mr. Pratt: I am offering this document as being part of the regular records of this corporation in connection with this [1274] particular transaction, and it makes no difference as far as the admissibility of the document is concerned, whether Nye & Nissen knew that the captain, or steward or chief engineer signed such a certificate.

The Court: There is nothing before the court, gentlemen. Let us proceed orderly. There is nothing before the court.

Mr. Pratt: I offer the document, Exhibit 94 for Identification, in evidence. [1274-a]

The Court: Let it be admitted.

Mr. Faulkner: That is objected to on the ground that what is now presented is not the claim, regardless of whom the claim is presented against; it is not the claim of Nye and Nissen in its present form.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit No. 94 for Identification was thereupon received in evidence.)

Mr. Faulkner: Upon the further ground, your Honor, that there is no foundation laid to connect that paper with any individual defendant in this case, hearsay as to them.

The Court: The objection will be overruled.

Mr. Pratt: Q: Mr. Thomas, after this invoice,

(Testimony of R. G. Thomas.)

Exhibits 94 or 93 for Identification, were received, do you know whether the bill was paid?

A. It was.

Mr. Pratt: I offer for identification a cancelled check dated August 7, 1944, a check of Interocean Steamship Corporation payable to Nye and Nissen, Inc., in the sum of $789.48.

The Court: It may be admitted and marked.

(The document was thereupon marked U. S. Exhibit 95 for Identification.)

Mr. Pratt: Q. Will you examine this exhibit, Mr. Thomas, and state if that is a paper that came from the files of your corporation.

A. It did. [1275]

Q. Kept in the regular and ordinary course of business? A. It did.

Q. And that check was paid, was it?

A. That is right.

Q. And was drawn in your office and under your supervision?

A. That is right, and I would sign it.

Q. This is signed by you?

A. That is right.

Mr. Pratt: This is offered in evidence, Exhibit 95 for Identification.

Mr. Faulkner: Same objection.

The Court: Admitted in evidence.

Mr. Faulkner: Same objection, your Honor.

The Court: It may be received and marked.

(U. S. Exhibit 95 for Identification was thereupon received in evidence.)

(Testimony of R. G. Thomas.)

Mr. Pratt: Q. Mr. Thomas, from what funds was this check paid?

A. From our money.

Q. From your own corporate funds?

Mr. Faulkner: Just a moment, Mr. Pratt. I object to it as calling for the opinion and conclusion of the witness. The check speaks for itself.

The Court: If he knows he may answer. The objection is overruled.

Mr. Faulkner: Exception; hearsay as to the defendants.

The Witness: It is drawn from our corporation funds.

Mr. Pratt: Q. Are you able to state whether Agwilines Inc. [1276] reimbursed your company for the payment of the amount represented by this check? A. They did.

Mr. Faulkner: I object to that on the ground the best evidence of that payment is the check from Agwilines to the Interocean Steamship Company.

Mr. Pratt: Q. Have you any evidence with you on that subject showing the reimbursement by Agwilines? A. I have.

Q. Will you produce that evidence?

A. There is a bottom part of the Agwilines check which covers the disbursements which was made for this vessel and another one.

Mr. Pratt: I ask that this paper produced by the witness be marked for identification.

The Court: It may be admitted and marked.

(Testimony of R. G. Thomas.)

(The document was thereupon marked U. S. Exhibit 96 for Identification.)

Mr. Pratt: Q. Does this paper now marked Exhibit 96 for Identification come from the regular records of your company, kept in the ordinary course of business? A. That is right.

Q. Will you state just what that is?

A. Well, it is the bottom part of a voucher check, which represents the reimbursement to us by Agwilines of two disbursement accounts which we rendered to them. One of them was on the steamship James Ross and the other one was on the steamship Cape Charles.

Q. Does that include the payment of this invoice in the sum of $789.18, the invoice being dated April 29, 1944? [1277]

Mr. Faulkner: We object to that upon the ground the document speaks for itself, and it does not purport on its face to include that, and if there is some other document that shows the inclusion of the Nye and Nissen account, it is not that particular document. That document is the stub of a check without any items on it. It is not the best evidence of what it includes.

The Court: Read the question.

(Question read.)

A. It does.

Mr. Faulkner: I made an objection, your Honor.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

The Witness: I have here the office file copy of

(Testimony of R. G. Thomas.)

a supplemental disbursement account which we rendered to Agwilines, in which we asked for the reimbursement of this particular item. This disbursement account has a copy of the bill and a copy of the—the copy of the purchase order, and it lists the particular invoice in question.

Mr. Pratt: May this document be marked for identification?

The Court: It may be admitted and marked for purposes of identification.

(The document was thereupon marked U. S. Exhibit 97 for Identification.)

Mr. Pratt: These documents now marked Exhibit 97 for [1278] Identification, including a number of papers, are part of the regular records of your company kept in the ordinary course of business? A. That is right.

Q. And include copies of various invoices, all of which were included in the payment of the sum of $1,151.68, all in connection with the outfitting of the steamship Cape Charles, is that right?

A. That is right.

The Court: Is there any question about the item probably the witness will be able to point out those items covering this invoice.

Mr. Pratt: Q. Will you point out, Mr. Thomas, the record content of this paper which establishes the fact that your check to Nye and Nissen, Exhibit No. 95, for $789.18, is included in the claim for reimbursement to Agwilines?

(Testimony of R. G. Thomas.)

A. Here is an exact copy of the invoice which you have already submitted. It does not carry quite all the signatures because we do not require it on the subsequent copies. But this invoice shows that it has been charged to this particular vessel, and it also gives the check number which paid the invoice and the date of payment.

Mr. Faulkner: I think the first page shows it, too, your Honor.

Mr. Pratt: Q. And the check number of the check to Nye and Nissen——

A. Was 3,634.

Q. Check No. 3,634? A. Yes. [1279]

Mr. Pratt: I offer in evidence these documents, which are marked collectively Exhibit 97 for Identification.

The Court: They may be admitted and marked.

Mr. Faulkner: Same objection, your Honor; hearsay as to the individual defendants, incompetent, irrelevant and immaterial as to all.

The Court: The objection will be overruled. Let them be admitted and marked.

(U. S. Exhibit 97 for Identification was thereupon received in evidence.)

Mr. Pratt: Q. Having reference to your relations with Agwilines as your agents acting for the War Shipping Administration, are you able to state with what funds you were reimbursed by Agwilines?

Mr. Faulkner: We object to that as calling for an opinion and conclusion; what funds Agwilines, a

(Testimony of R. G. Thomas.)

company with which he is not connected, used to pay their bills.

Mr. Pratt: I am asking him if he knows.

Mr. Faulkner: You will have to show a foundation of him knowing. The best evidence would be the records of Agwilines of where they got the money.

The Court: If this witness knows he may answer.

Mr. Faulkner: If the Court please, evidence of another company's financial transactions could not be the testimony of another person. [1280]

The Court: Read the question.

(Question read.)

The Court: If he knows he may answer.

Mr. Faulkner: Exception, your Honor.

The Witness: Yes, I know.

Mr. Pratt: Q. With what funds?

A. The War Shipping Administration funds.

The Court: Q. How do you know that?

A. Because I am familiar with the general agency requirements of the War Shipping Administration, and I know that all funds for disbursements on vessels operated by the War Shipping Administration come from Government funds. In our own particular case——

Mr. Faulkner: I move that his answer go out.

Mr. Pratt: Let him finish his answer, please.

The Witness: In our own particular case the

(Testimony of R. G. Thomas.)

Government gives us a revolving fund. In our own case it is $300,000.00. In Agwilines it is much larger. All disbursements that are made for these vessels must be disbursed from that fund.

Mr. Faulkner: We submit, your Honor, the witness' answer shows he does not know anything about how the money comes.

The Court: Let the question and answer stand. The Court has ruled. Let us proceed.

Mr. Faulkner: I am making another objection in the light of his present testimony.

The Court: The objection will be overruled. [1281]

Mr. Faulkner: I have not made it yet.

The Court: Proceed.

Mr. Faulkner: I object to it on the ground the witness' present answer discloses that his testimony that he knows of his own knowledge where the money came from is merely based upon his understanding of how another company with which he has no connection would operate under a contract which he has never seen on the assumption that it is similar to a contract that they themselves had.

The Court: Let the question and answer stand. The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Pratt: You may cross examine.

Cross Examination

Mr. Faulkner: Q. Mr. Thomas, at the time the Cape Charles came into port some time in the month

(Testimony of R. G. Thomas.)

of April, 1944, what was your position with the company?

A. Treasurer, Interocean Steamship Company.

Q. The same position that you now hold?

A. That is right.

Q. Your company ordered certain merchandise for that vessel, is that correct?

A. That is right.

Q. It was ordered by a purchasing agent of your company? A. That is right.

Q. And after it was ordered an invoice was received from the firm of Nye and Nissen and out of your own funds you paid for [1282] that invoice, isn't that correct? A. That is right.

Q. Now, then, after you had completed that transaction you presented a claim against the United States of America, Agwilines, did you not?

A. That is right.

Q. And you presented this claim and you had a certificate, and I would ask you to read the certificate that accompanied the claim of your company to Agwilines?

A. "We here certify that the prices charged for the articles and/or services specified as per the invoices detailed herewith are in accordance with the contracts or orders therefor; that the prices charged are reasonable and correct; and that no refunds or rebates have been or will be received unless for the account of the vessel. It is further certified that all invoices detailed herewith have not been paid and this corporation agrees to indemnify and save

(Testimony of R. G. Thomas.)

harmless against any and all liability resulting from non-payment of the attached invoices. Inter-ocean Steamship Company, Sub-Agent," and signed by myself.

Q. What is the date of that?

A. It says August 17, 1944.

Q. In other words, that claim presented by your company went forward to the Agwilines ten days after you had issued a check on your own funds to the firm of Nye and Nissen, which is represented here by Exhibit No. 95? A. That is right.

Q. And the claim that your company presented against Agwilines, [1283] it is your testimony that Agwilines paid that to your company?

A. That is right.

Q. And that this Exhibit No. 96 for Identification, is the stub of a check that came from them? In other words, the check went into the bank and you kept this, isn't that right?

A. That is right.

Q. Would this indicate, Mr. Thomas, that that check was dated the 25th of August?

A. No, it would not.

Q. What does the 8/25 represent?

A. I don't know. That is from Agwilines—we received this check on September 5. Here is our paid stamp.

Q. That is the date you received it?

A. That is the date we received it.

Q. But you do not know the date of their check? A. No.

(Testimony of R. G. Thomas.)

Q. You would not know what the "F.G."——

A. I don't know. That is some symbol they put on in New York.

Q. You testified that you knew something about this certificate, and I will impose upon you, Mr. Thomas, and ask if you are familiar with it. It is such fine print I would stumble over it. Would you read that certificate in the left-hand corner in green ink that you say you are familiar with and is required under the rules of the War Shipping Administration for all merchandise that goes to a ship that is being operated under the War Shipping Administration?

A. The identical stamp is on some other invoices. Could I find a more legible [1284] copy to read?

Q. Yes, if you would, and then I will read it. I won't impose upon you.

A. I will see if I can find it.

Mr. Faulkner: I will get Mr. Zirpoli to read it.

The Court: Let the witness read it. You can follow it with that copy that you have there.

Mr. Faulkner: If I could follow it, I could read it to you.

The Court: Q. Have you one there?

A. Yes, I have one here. Do you want me to read it?

The Court: Yes.

The Witness: "I certify that the services above specified have been performed or that the articles in quantity and quality above specified have been delivered to the vessel in good condition."

(Testimony of R. G. Thomas.)

Mr. Faulkner: Q. That was signed on the Nye and Nissen invoice by a man and it appears—does he have a title there, Mr. Thomas? L. M. something?

A. I don't recognize that signature, and the invoice does not indicate whether he is the master, the chief steward or the chief engineer, but it should have been signed by the chief steward.

Q. In other words, Mr. Thomas, this particular document when it reached you was signed by someone who purported to be the master, chief steward, or—what is the third? A. Chief engineer.

Q. The chief engineer or the steward, and it would appear that the signature is L. M.——

A. I don't know the signature and I don't know the name. I don't recognize it.

Q. It reached you in that form with that signature?

A. It would have to be or I wouldn't pay it.

Q. This is better. It appears on this one, "L. M. West," isn't that correct?

A. Yes, that would seem to be West.

Q. In other words, the certificate from the vendor, Nye and Nissen, the certificate of the steward or the chief engineer that the articles described in the invoice were received in good condition are the prerequisites of your going further and paying the bill, is that right?

A. All invoices—let me say it this way: All invoices must have the vendor's certification. They must be signed by some representative of the party

(Testimony of R. G. Thomas.)

who is delivering the goods. Then we require a second signature, and it must be signed by some representative of the vessel, and sometimes they are signed by a checker upon the dock. But we have to have evidence that the merchandise was delivered to the vessel.

Q. Will you use that purchase order and I will ask you a few questions about it. The purchase order that you hold in your hand is dated the 28th of April, is it not? Do you also notice that it is a confirmation, is that correct?

A. Well, can I enlarge upon this a little bit?

Q. No, I would like you to follow me, please?

The Court: Just a moment, please. Let him answer.

Mr. Faulkner: He asked if he could enlarge. He has not answered yet.

The Court: He may enlarge if it is necessary.

Mr. Faulkner: I thought on cross examination you answer a question and then enlarge.

The Court: The Court instructs him now to enlarge on whatever he had in mind.

Mr. Faulkner: I except to that ruling. I am entitled to an answer.

The Court: Very well, proceed.

The Witness: We receive a requisition for supplies from the ship's officer. Our purchasing department receives these requisitions, and they might have to shop around before they can find the merchandise. So they oftentimes call up the vendors

(Testimony of R. G. Thomas.)

and place an order over the telephone, and they confirm it by sending a purchase order.

Q. Now, you did not order this merchandise?

A. I didn't do it.

Q. You do not know any of the transactions that led up to the issuance of this purchase order, do you? A. I do not.

Q. In other words, you do know, however, that on the face of that purchase order the word "Confirmation" appears? A. That is right.

Q. The word "Confirmation" means what?

A. It means that we confirmed probably a telephone order. [1287]

Q. From your records, do you know when the telephone order was placed?

A. No, I couldn't say that.

Q. Do you know with what person it was placed? A. No.

Q. Do you know whether the order represented by that paper was ever talked about with either a man named Moncharsh, Menges, Goddard or Berman? A. No.

Q. You notice on that order further it says, "U. S. Department of Agriculture Inspection Certificate required." Did you get such a certificate?

A. Not to my knowledge.

Q. Do you know whether your records show that you got such a certificate? A. No.

Q. Would you say that you did not?

A. I don't know.

Q. Did you look in your records?

(Testimony of R. G. Thomas.)

A. No. That normally does not fall under my jurisdiction. I do not follow those things.

Q. In other words, the record you have brought into court is not the complete record of your own knowledge of the transactions relating to the purchase of those goods from Nye and Nissen, is it?

A. Well, I would say this, that we must have that United States Department of Agriculture certificate. We might not have the original now, but it would have been sent on to Agwilines, probably in the disbursement account.

Q. Do you know whether anyone of your firm gave that certificate to any Government FBI agent?

A. No, I do not know to my own knowledge.

Mr. Faulkner: I would ask that the witness, your Honor, de directed to examine his records and produce the remaining part of the purchase order or a remaining record referred to in the purchase order, namely, the U. S. Department of Agriculture Inspection certificate.

Mr. Hippeli: There is none for the Cape Charles, your Honor.

Mr. Pratt: That is a mistake. We have. It means the Cape Charles. It says Cape Chalmers and the dates correspond. It is simply a typographical error. This is the Cape Charles.

The Court: You might show it to the witness.

Mr. Faulkner: Mr. Pratt, the defendants say there is a Cape Chalmers, but the witness might know.

(Testimony of R. G. Thomas.)

Q. Will you look at that? You have seen those certificates before? A. I have seen them.

Q. Would you look at that?

Mr. Pratt: I will have to make this statement to the Court to clear myself: I supposed this was one for this boat and that the name Chalmers was simply a misprint. I am now advised that so far as the Government is concerned we have no certificate of inspection so far as the Cape Charles is concerned.

Mr. Faulkner: Q. Apart from what Mr. Pratt said, would you recognize that as a type of inspection certificate that ordinarily would be received by your company in relation to [1289] the inspection of eggs?

A. No, I would not, because I do not have anything to do with the certificates. The purchase orders and the invoices when they are submitted to me must have all the relevant documents and I am only interested in certification and receipts, and I have to leave it up to our purchasing department to see that they are properly inspected, and so on, and I do not have anything to do with it. I could not state of my own knowledge what a certificate looked like.

Mr. Faulkner: I ask that the paper be marked Defendants' Exhibit for Identification, your Honor.

Mr. Pratt: Let me see it. This has nothing to do with this case and we object to its being utilized.

The Court: Counsel is going to make a motion to strike, are you not?

(Testimony of R. G. Thomas.)

Mr. Faulkner: I am going to make a motion to strike the witness' testimony.

The Court: In relation to this document that you hold in your hand.

Mr. Faulkner: This is the document that the witness referred to and could not identify as an inspector's certificate.

The Court: Counsel now says he was mistaken. It has no place in this case. It has nothing to do with this case and he was mistaken when he offered it to you.

Mr. Faulkner: Yes, but I merely asked that it be identified as the paper referred to by the witness. I am not asking [1290] that it go in evidence.

(The document was thereupon marked Defendants' Exhibit V for Identification.)

Mr. Faulkner: I move to strike the testimony of this witness with relation to the purchase order and the invoice upon the ground that the records that were received do not emanate from the men who had anything to do with the transaction, and I submit to your Honor that where in a criminal case evidence is offered against defendants relating to a purchase order that we are entitled to have the best evidence available.

The Court: What would the best evidence be?

Mr. Faulkner: The best evidence in this case would be the purchasing agent who placed this order, who could testify that he placed an order and in the course of the placing of that order he

(Testimony of R. G. Thomas.)

issued a purchase order and that this is the purchase order.

The Court: I take it if he is available they will produce him.

Mr. Pratt: If the Court please, the records which this witness brought are records kept in the regular course of business by his corporation and are linked to this transaction. Counsel has admitted that the invoice was issued by the defendant corporation and the items described in the invoice, which they admit, are identical with the items in the purchase order which comes from the regular records of this company. [1291]

Mr. Faulkner: We do not do any such thing, Mr. Pratt. We do not do any such thing, because that is the very point. In other words, I have reached a stage where I will develop it further before your Honor passes upon my motion, if I am to show the position in which the defendant is put.

Q. Have you got the purchase order? I would like you to keep it. Mr. Thomas, what kind of butter did your company order?

Mr. Pratt: I object to that, if the Court please.

Mr. Faulkner: I just want to show the infirmity of this testimony and just demonstrate it beyond any question.

Mr. Pratt: I object to that question. It is perfectly obvious that what he would testify from would be from this record which is now in evidence, and whatever that purchase order describes is what was ordered, acording to the evidence as it now stands, and

(Testimony of R. G. Thomas.)

that is identical in description with the invoice which was submitted by Nye and Nissen to the War Shipping Administration.

Mr. Faulkner: That is an absolute misstatement, your Honor. I do not want to argue with Mr. Pratt. It is an absolute misstatement.

Mr. Pratt: In what respect?

Mr. Faulkner: I am going to develop it from this witness, and I submit I have a right to.

The Court: Proceed.

Mr. Faulkner: Q. What kind of butter was ordered, Mr. [1292] Thomas?

A. 600 pounds of butter.

Q. The quality is not indicated, is it? What kind of eggs are ordered?

A. 36 cases of eggs.

Q. Quality or size are not mentioned?

A. No.

Q. Now, you have 200 pounds of Y.A. cheese. What does Y.A. mean?

A. I couldn't tell you.

Q. Now, you have an invoice right there, have you not? A. That is right.

Q. The invoice describes certain butter, does it not? A. It says, "10 boxes of butter AA".

Q. That is a quality. Do you know the circumstances surrounding the transaction whereby an order that merely read for butter should end up with an invoice for a certain quality of butter?

A. No.

Q. Now then, you placed a purchase order for

(Testimony of R. G. Thomas.)

200 pounds of Y.A. cheese and you got 240 pounds of Cheddar Trips. Do you know that Cheddar Trips are not Y.——

A. That is what the invoice says.

Q. Do you know that Cheddar Trips are not Y.A. cheese?

A. I don't know that either.

Q. You know that 240 pounds isn't 200 pounds, don't you? A. I know that, yes.

Q. And you know nothing of the fact how an order for 200 pounds was issued and you received 240? A. No.

Q. Now then, you ordered according to your records, 36 cases of [1293] eggs and according to your invoice you got 30 cases of Medium Processed AA eggs, isn't that correct?

A. That is what the invoice says.

Q. And you do not know how it happened that a written order went out in one form and that another order was filled in another, do you?

A. No.

Mr. Faulkner: I therefore submit my objection, your Honor, that the courts have ruled these papers out until someone more familiar with the transaction comes in and identifies them so they will have some semblance of being evidence in this type of case.

Mr. Pratt: If the Court please, the charge in this second count of the indictment is based upon the invoice, and what was delivered under the invoice. The charge is that they made a false claim

(Testimony of R. G. Thomas.)

against the Government in presenting this invoice to the Government. The proof will show that instead of the merchandise described in the invoice, inferior eggs were delivered and cheese of a less weight than was invoiced. Now, the charge of fraud is based upon that invoice. Whether the purchase order described the identical merchandise is entirely immaterial. If Nye and Nissen presented an invoice that was false, and the Government paid it on the strength of the representation contained in the invoice, a fraud and a crime has been committed by the defendant. Now, whether or not, as I said before, the purchase order is identical in form is beside [1294] the question. The fact of the matter is it is so near any amount and comes from such a source as this witness produces it from, makes it clearly admissible in evidence.

Mr. Faulkner: I understand the law to be this, your Honor: Obviously, where there is a tremendous quantity of business handled in the march of trade that you do not have to produce a witness who would remember of his own knowledge a particular transaction. The basis of this transaction is that an order was placed, that Nye and Nissen presented in fulfillment of that order, certain merchandise. The writings are permitted to go in evidence because of the particular circumstances. This is a transaction between Nye and Nissen on the one hand and a purchasing agent of the company on the other hand. He presumably knows about this transaction and how it comes that an order went out in

(Testimony of R. G. Thomas.)

one form requiring a Government certificate, indicating that it is a confirmation, and a record comes in from the company of the particular merchandise in different amounts and different quantities, and that is the best evidence of this transaction.

Mr. Pratt: I think the Court's attention should then be called to the fact——

Mr. Faulkner: The fact that the witness is in San Francisco shows he is immediately available, and we submit we are entitled to have the benefit of a clear-cut testimony in relation to these purchases and not build a paper case prepared by companies that we haven't anything to do with.

Mr. Pratt: A paper case?

Mr. Faulkner: It is.

Mr. Pratt: Let me ask counsel once more whether the corporation defendant admits that this invoice was submitted for payment and was paid.

Mr. Faulkner: I offered you that stipulation to avoid all of this testimony.

Mr. Pratt: All right, then, that is stipulated.

Mr. Faulkner: I withdrew it yesterday. I withdrew it in the record yesterday. I will not stipulate with you on any subject whatever.

The Court: I will allow this testimony to stand at this time. The objection will be overruled.

Mr. Faulkner: Exception. That is all.

Redirect Examination

Mr. Pratt: Q. Mr. Thomas, having reference to the certificate which you referred to that the

(Testimony of R. G. Thomas.)

invoice bears, signed by a man who is either the master, chief engineer or steward, do you know the extent, if any, of any inspection that was made by that officer before he signed the paper?

A. No, I don't know that he inspected it. That is his duty though. He is supposed to check it as to quantity and quality.

Q. You do not know what occurred in that respect? A. No, I do not. [1296]

Mr. Pratt: I think that is all. If the Court please, I want to direct attention to the exhibit——

The Court: You may do that after the recess. The jurors may be excused for a few moments.

(Recess.)

The Court: May I inquire about the witness on the stand?

Mr. Pratt: All through with him.

Mr. Faulkner: Yes. [1296-a]

The Court: You may proceed.

Mr. Pratt: If the Court please, one of these exhibits, 96 for Identification, I neglected to offer in evidence. This is the document, this is the bottom of the check received from Agwilines by the Interocean Company, and I offer this in evidence.

Mr. Faulkner: The same general objection, your Honor.

The Court: Objection overruled.

Mr. Faulkner: Exception.

The Court: Admitted and marked.

Mr. Pratt: And all of these exhibits that were offered in connection with the testimony of Mr.

Thomas, I would like it understood that they are offered in connection with the second count of the indictment, and also in connection with the first count of the indictment, namely, the conspiracy count.

(U. S. Exhibit 96 for Identification was thereupon admitted in evidence.)

The Court: Call your next witness.

Mr. Faulkner: As to that offer, we made quite a few objections, your Honor, and your Honor passed upon them with that clear understanding that they were offering them as to all defendants on that count.

The Court: Yes.

Mr. Faulkner: And we except to the court's ruling. [1297]

ALLAN HOWELL,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

Direct Examination

Mr. Pratt: Q. Will you state your name?

A. Allan Howell.

Q. Allan Howell? A. Yes.

Q. A-l-l-a-n, is it not? A. Yes.

Q. Mr. Howell, where do you reside?

A. New York City.

Q. What is your occupation?

A. Chief Steward.

(Testimony of Allan Howell.)

Q. At the present time what ship are you chief steward of?

A. I just left the S. S. Medina in New York when I came out here.

The Court: The reporter must take down everything you say, so you can help him out by not talking too fast.

The Witness: Yes.

Mr. Pratt: Q. Mr. Howell, were you at any time chief steward on the steamship Capé Charles?

A. Yes, sir.

Q. During what period?

A. I was assigned to the ship, in New York, in January. Then I came out here to Frisco and joined the ship out here.

Q. In what year?

A. That was in 1944, January.

Q. You went on the Cape Charles in January of 1944? A. Yes, sir.

Q. And you were on that boat as chief steward until what date?

A. Well, I was there until some time during May.

Q. Some time what?

A. Some time in May.

Q. May of 1944? A. Yes, of 1944. [1298]

Q. Do you have your certificate of discharge from that boat?

A. Not with me here, no, sir.

Q. You do not have it here. I will ask whether

(Testimony of Allan Howell.)

you were chief steward on the steamship Cape Charles on April 29, 1944? A. Yes, sir.

Q. Where were you on that date?

A. I was aboard the ship.

Q. In what harbor? A. San Francisco.

Q. On what pier, do you remember?

A. I am not quite sure the pier. I think it was 17—16 or 18, I am not quite sure.

Q. You are not quite sure? A. No.

Q. Do you recall on that date, April 29, 1944, that certain food products were delivered to the boat? A. Yes, sir.

Mr. Pratt: I am offering for identification copy of an invoice of Nye & Nissen dated April 29, 1944, addressed to the United States of America, War Shipping Administration, and for delivery to the steamship Cape Charles at Pier 48.

The Court: Admitted and marked.

(The document was marked U. S. Exhibit 98 for Identification.)

Mr. Pratt: Q. I am handing you this exhibit, 98 for Identification, and ask you if you have ever seen that particular paper before.

A. Yes, sir.

Q. And if you look on the back, you have some writing on the back? A. Yes, I endorsed it.

Q. You endorsed that with your name, did you?

A. Yes. [1299]

Q. On the back. When did you put your name on the back? A. That was April 29, 1944.

Q. On that occasion do you remember the time

(Testimony of Allan Howell.)

when certain food products as described in this invoice were delivered to the boat at that pier?

A. I would say they were delivered to her between 10 and 1:30 that day.

Q. 10 and 1:30? A. Yes.

Q. How do you place that time?

A. Well, the stores were delivered on the dock, I would say that morning. Then the men brought them aboard that day between, say, 10 and 1:30 p.m., as I said before. Then we placed them in the icebox. I won't say exactly what time it was that day.

Q. When did this boat leave the pier?

A. We left the pier about between 1:30 and 2:00 p.m.

Q. Where did the boat then go?

A. Went over to the stream, anchored.

Q. Anchored out in the stream in the bay, here, in San Francisco?

A. Yes, sir, the Bay of San Francisco.

Q. When these supplies were delivered there what, if any, documents came into your hands from the truck driver or any other person in connection with these supplies?

A. Well, after all the stuff came aboard they generally delivered a slip to the dock, and I am supposed to sign them.

Q. Would they also deliver to you a number of invoices?

A. Yes, sir, a number of invoices at the same time, yes. [1300]

(Testimony of Allan Howell.)

Q. Is this paper Exhibit 98 for Identification, one of the papers? A. Yes.

Q. That was delivered to you when the merchandise came on the pier?

A. Well, I wouldn't say that paper came to me immediately, but usually after all the stores have been delivered then all the papers come aboard the ship.

Q. Do they come on the same day?

A. Yes.

Q. Before your boat left the pier and went to anchor in the stream? A. Yes.

Mr. Pratt: I offer this paper in evidence.

Mr. Faulkner: We object as incompetent, irrelevant, and immaterial, and hearsay as to the defendants.

The Court: Objection overruled.

Mr. Faulkner: Not binding on the defendants.

The Court: Admitted and marked.

Mr. Faulkner: Exception.

(U. S. Exhibit 98 for Identification was thereupon admitted in evidence.)

Mr. Pratt: Q. After the ship had gotten out into the bay at anchor, I will ask you whether any persons came there in connection with these items of food products?

A. Yes, some special agents came out there that afternoon.

Q. Do you know who came?

A. Well, it was Mr. Magee, I remember his name, and two other men came along with him.

(Testimony of Allan Howell.)

Q. Was Mr. Johnson one of them, an FBI agent——

A. If I saw [1301] the gentleman I could——

Q. This man, here? A. Yes.

Q. Do you remember whether there was a——

Mr. Faulkner: Both are here.

Mr. Pratt: Do you identify Mr. Magee in the back of the court room?

A. Yes, Mr. Magee, yes.

Q. And Mr. Johnson, here, at the trial table?

A. Yes.

Q. Now, I will ask you whether there was an Army officer with them?

A. Yes, there was one along.

Q. Do you know what his name was?

A. I don't quite remember his name.

Q. Was it Evans?

A. I really don't remember the name.

Q. When did these men come out to that ship?

A. They came out there that afternoon, I presume around between two and three, I guess.

Q. How did they come out to the boat?

A. They came out in a launch.

Q. They came out in a launch. When they got out there, what did they do?

Mr. Faulkner: We object to that as hearsay, your Honor. This is the observation of another man of what other people did, all of whom are in the court room, no defendant present; hearsay as to the defendants.

Mr. Pratt: The purpose of this is to identify

(Testimony of Allan Howell.)

the merchandise in connection with whatever these men did who came out [1302] there on the boat, in order to show that it is the same merchandise that is described in this invoice.

The Court: For that limited purpose I will allow it. Objection overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. When these men came out there what did they do?

A. They wanted to see the supplies that were delivered to the ship that day.

Q. What?

A. They wanted to see the supplies that were delivered to the ship that day.

Q. The items that were delivered to the boat in connection with this particular incident were what, what were the items delivered?

A. Butter, cheese and eggs.

Q. How many cases of eggs?

A. Supposed to be 10 boxes of eggs, 36 cases of eggs, three cases of cheese, and 10 boxes of butter.

Q. When they came out on the boat, these three men, in the afternoon, where were the 36 cases of eggs that had been delivered at the boat previously?

A. They were laying in the deck by the No. 4 hatch.

Q. On the deck by the No. 4 hatch. Did you point these cases out to these men? A. Yes.

(Testimony of Allan Howell.)

Q. Where were the three cases of cheddar cheese that had been delivered to the boat?

A. They were in a refrigerator.

Q. Did you go to the refrigerator with either of these men [1303] that came on board?

A. Yes, I took them down there and pointed out the stuff.

Q. Which one of the men went down to the refrigerator?

A. If I remember it, all three went down there.

Q. All three went down there. Did you point out then these three cases of cheese which had come on that morning?

Mr. Faulkner: We object to this as leading and suggestive.

Mr. Pratt: Very well.

Q. What did you point out to these men when they came aboard and when they went with you to the refrigerator?

A. I showed them the butter and cheese that came aboard that day.

Mr. Pratt: Cross-examine.

Cross Examination

Mr. Faulkner: Q. Mr. Howell, on this day when these Government men came out on the boat, that was an unusual occurrence, naturally, and you remember the incident, that is correct?

A. Yes.

Q. The first time you saw the merchandise was on board the ship? A. Yes.

(Testimony of Allan Howell.)

Q. You did not see it on the pier?

A. No, I did not receive it on the pier.

Q. Do you recall on a certain date you saw the eggs on a companionway and you saw some butter and cheese in the icebox; is that correct?

A. I saw the butter and cheese that came aboard, I saw where they put it, and the eggs was on deck still, they [1304] didn't go down the companionway yet.

Q. The butter and cheese got in the icebox and the eggs were in a companionway? A. Yes.

Q. This was when the ship was out in the stream? A. Yes.

Q. Do you remember the date?

A. July 29th—August—April 29, 1944.

Q. Pardon me? A. April 29th.

Q. How do you fix that date?

A. It was Saturday.

Q. Saturday? A. Yes.

Q. Do you fix the date because it was a Saturday or do you fix the date because that is the date of your invoice?

A. Well, that was the day the stores came aboard.

Q. Without the invoice would you remember the day?

A. Yes, I remember the day.

Q. The ship's stores—how large a vessel is the ship you were on, the Cape Charles?

A. 8000-ton ship.

Q. 8000-tons? A. Yes.